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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/088,731

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Karl Heinz Schmid

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/088,731	<b>Applicant(s)</b> SCHMID ET AL.	
	<b>Examiner</b> Lakshmi S. Channavajjala	<b>Art Unit</b> 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 2-2-09.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-14, 17-20 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 17-20 and 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt of response dated 2-2-09 is acknowledged.

Claims 1-11, 15-16 and 21-22 are canceled. Claims 12-14, 17-20 and 23-31 are pending in the instant application.

#### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 12-14, 17-20 and 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,714,565 to Wevers et al (Wevers) in view of US 5,859,218 to Wulff et al (Wulff) or vice-versa.

Wevers teaches a homogenous concentrated liquid detergent composition comprising monoesters of dicarboxylic acid and substantial amounts of nonionic surfactants (abstract). The monoesters are described in col. 2, L 18-32, col. 3, L 56 through col. 4, L18), which include dicarboxylic acids such as those of claim 14. For the claimed fatty alcohol chain length, Wevers teaches alcohols that overlap with the chain length of C6-22 of claim 11. For the amount of the monoesters, Wevers teaches 2% to 50% by weight of the composition. Wevers teaches that the composition contains from 8% to 20% of nonionic surfactants (col. 2, L 65-67). Wevers suggests nonionic surfactants that contain a hydrophobic organic radical condensed with an ethylene oxide hydrophilic moiety particularly polyethoxylated aliphatic alcohols. However, Wevers do not teach the claimed oliglucosides.

Wulff teaches high detergency alkyl oliglycosides and alkyl monoglucosides for use in cosmetic, personal care detergent as well as household and industrial uses (col. 1, L 15-35). Wulff states that alkyl glucosides and polyglucosides contribute to the surfactant activity (col. 1, L 43+). Wulff demonstrate that alkyl polyglucosides for increasing the foam height during washing (col. 16, table 5a) and for their cleaning ability. Wulff teaches that the alkyl polyglucosides may be employed alone or in combination with other surfactants (col. 26, L 30-52). Wulff suggests that while anionic surfactants are generally irritating to skin, alkyl polyglucosides do not cause skin irritation, along with their good cleansing, good foaming properties. The examples presented by Wulff suggest employing alkyl polyglucosides in detergent as well as personal care formulations such as shampoos.

It would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ alkyl polyglycosides surfactants of Wulff in the composition of Wevers as a surfactant because both Wevers and Wulff are directed to the same types of compositions i.e., cleaning compositions, Wevers desires a combination of surfactants with the monoesters of dicarboxylic acid and further Wulff teaches that alkyl polyglucosides can be employed as surfactants either alone or in combination in cleaning and detergent compositions owing to their high cleaning and good foaming power.

Alternatively, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the monoesters of dicarboxylic acids of Wevers in the cleaning and personal care compositions of Wulff because of the

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above described advantages of alkyl polyglycosides (by Wulff) and further because Wevers suggests the monoester compounds act as hydrotropes in liquid cleansing compositions and impart stability to the compositions in addition to the cleaning power (col. 1). A skilled artisan would have expected that the combination of monoesters of dicarboxylic acids and alkylpolyglucoside to provide enhanced cleaning power, foaming, stabilizing and also less irritation to skin (compatibility). While Wevers does not teach the specific monoester of claim 23 and also both Wevers and Wulff fail to teach the specific ratio of claims 26-31, Wevers describes the same dicarboxylic acids and fatty alcohols that are also described in the instant claims and hence choosing a particular ester so as to achieve the optimum stabilizing effect would have been within the scope of a skilled artisan. Further, optimizing the amounts of monoesters and the alkyl glucosides so as to obtain the desired stability as well as the foaming, cleaning and compatibility to skin would have been within the purview of a skilled artisan.

### ***Response to Arguments***

3. Applicant's arguments filed 2-2-09 have been fully considered but they are not persuasive.
4. Applicants argue that Wevers discloses concentrated heavy duty detergent compositions containing (a) 10-50% of a mixture of anionic and nonionic surfactants, (b) less than 50% water, and (c) a water insoluble dicarboxylic acid C8-20 monoester. (see col. 2, line 18 and col. 3, line 56), but there is no disclosure or suggestion in Wevers of an anionic form of a dicarboxylic acid C8-20 monoester. However, applicants argue that the specification of a water insoluble material defines a material that does not dissociate

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in water, and therefore as a matter of essence must be anionic. It is argued that not only does Weavers fail to disclose an anionic dicarboxylic acid ester, Weavers also fails to alkyl/alkenyl oligoglycosides.

5. Applicants' arguments are contradictory because on one hand it is argued that Weaver teaches water insoluble but fails to teach anionic and on the other hand, they argue that the specification of a water insoluble material defines a material that does not dissociate in water, and therefore as a matter of essence must be anionic. Weavers teach that the dicarboxylic acid acids are water soluble (see claims of Weaver). Additionally, the disclosure of Shimizu et al (attached to this office action) also teach that the dicarboxylic acid monoesters salts are by nature water soluble (Shimizu page 11). Further, Weavers teaches the same dicarboxylic acids and alcohols for preparing the monoesters and the burden is on applicants to show that the compounds of Weavers are not anionic. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

6. Applicants argue that the Examiner relies on Wulff for its disclosure of a process for preparing alkyl polyglycoside and a variety of applications for the alkyl polyglycosides prepared by the disclosed method as indicated by the examples. It is argued that even if the Examiner were correct in her characterization of Wulff as overcoming the deficiencies Weavers with respect to the oligoglycosides, which applicants do not concede, there is nothing in Wulff to suggest the claimed combination

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of the specified alkyl and/or alkenyl oligoglycosides and at least one anionic dicarboxylic acid C6-22 monoester or salt thereof.

Applicants' arguments are not persuasive because applicant's arguments against the references individually and one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Wulff states that alkyl glucosides and polyglucosides contribute to the surfactant activity (col. 1, L 43+). Wulff demonstrate that alkyl polyglucosides for increasing the foam height during washing (col. 16, table 5a) and for their cleaning ability. the motivation to combine the monoesters of dicarboxylic acids with alkyl polyglucosides comes from the teachings of Wulff that alkyl polyglucosides do not cause skin irritation, along with their good cleansing, good foaming properties. The examples presented by Wulff suggest employing alkyl polyglucosides in detergent as well as personal care formulations such as shampoos.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lakshmi S Channavajjala/  
Primary Examiner, Art Unit 1611  
April 11, 2009